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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,940	04/06/2007	Rolf Weiler	AP 10800	7081
52203	7590	12/21/2009		
CONTINENTAL TEVES, INC. ONE CONTINENTAL DRIVE AUBURN HILLS, MI 48326-1581			EXAMINER BURCH, MELODY M	
			ART UNIT 3657	PAPER NUMBER
			MAIL DATE 12/21/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,940	Applicant(s) WEILER ET AL.	
	Examiner Melody M. Burch	Art Unit 3657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/14/09 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation of the at least one actuating device (5) being arranged in the brake caliper (3) that operates directly on the brake lining (4) as recited in claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Examiner notes that, as best understood, the at least one actuating device is the pressurized fluid that acts by way of a brake piston (not shown) as explained in paragraph [0014] lines 6-8 of the instant specification and also by way of the carrier plate 18 on the brake lining. Examiner notes that the action of the at least one actuating device (5) on the brake lining (4) is shown to be indirect.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

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prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claim 7. The phrase "at least one actuating device (5) arranged in the brake caliper (3) that operates directly on the brake lining for exerting an application force on the brake lining (4)" is indefinite. It is unclear to the Examiner how the exertion of the application force by the at least one actuating device (5) occurs "directly" on the brake lining (4) since it is done by way of a brake piston that is not shown as Applicant admits

in paragraph [0014] lines 6-8 of the instant specification and by way of the carrier plate 18. Also see the Drawing Objection.

The remaining claims are indefinite due to their dependency from claim 7.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 7-9 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by GB-2185079 (GB'079).

Re: claims 7, 8, and 12. GB'079 shows in figures 1-4 a spot-type disc brake comprising: a brake caliper 11 straddling a brake disc 10, at least one brake lining 19 displaceably arranged in relation to the brake caliper for tribological interaction with the brake disc when the brake is applied; at least one actuating device 26, 27 or the pressurized fluid arranged in the brake caliper for exerting an application force on the brake lining, and a spring assembly 29,31,33,34 to adjust a clearance between the brake lining and the brake disc after brake application, which is detachably fastened in the spot type disc brake, wherein the spring assembly includes a spring element 30,31 which is at least radially and axially supported on the brake caliper and, in addition, comprises a spring clip 34 connected to the spring element and being detachably fastened at the brake lining by way of two spring arms 33,33.

Re: claim 9. GB'079 shows the limitation wherein the spring clip 34 has spring arms 33,33 and is received in a rotatable fashion at a brake lining 19 which is coupled to the at least one actuating device, via intervening elements such as the brake disc particularly when the brake is applied, as broadly recited.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB'079 in view of US Patent Application 2002/0043436 to Burgdorf et al.

GB'079 is silent with regards to the spring arm being hooked into a receiving element which is attached to the brake lining.

Burgdorf et al. teach in figure 1 the use of a spring arm being hooked into a receiving element 13 which is attached to a brake lining 5.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the connection of the spring arm to the brake lining of GB'079 to have been by way of the spring arm being hooked into a receiving element, as taught by Burgdorf et al., in order to provide a means of preventing decoupling of the spring arm from the brake lining to help maintenance pad to clearance maintenance.

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9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB'079 in view of EP-1227260 (EP'260).

GB'079 is silent with regards to the spring clip and the spring element being designed as separate components.

EP'260 teaches in figure 3 the use of a spring assembly with the spring clip 15 and the spring element 14 being designed as separate components.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the spring assembly of GB'079 to have included the spring clip and spring element designed as separate components, as taught by EP'260, in order to provide a means of replacing one of the components without having to remove the entire spring assembly. See *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961) (The claimed structure, a lipstick holder with a removable cap, was fully met by the prior art except that in the prior art the cap is "press fitted" and therefore not manually removable. The court held that "if it were considered desirable for any reason to obtain access to the end of [the prior art's] holder to which the cap is applied, it would be obvious to make the cap removable for that purpose.").

Response to Arguments

10. Applicant's arguments filed 12/14/09 have been fully considered but they are not persuasive. Applicant has amended independent claim 7 to include the limitation of the at least one actuating device (5) being arranged in the brake caliper (3) such that it operates directly on the brake lining (4) for exerting an application force on the brake lining (4). As noted above, Examiner is first unclear as to what element represents the

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at least one actuating device. Applicant at least suggests that the actuating device is not the brake piston because in paragraph [0014] lines 6-8 of the instant specification Applicant describes the at least one actuating device acting on the brake lining by way of a brake piston. This description leads one to believe that the brake piston is a separate element from the at least one actuating device. Second, Examiner notes that the description in the specification and the illustration in the figures suggest that the action of the actuating device on the brake lining is not direct as claimed since Applicant explains that the action is "by way of the brake piston" and shows that it is also by way of the carrier plate 18. If Applicant intends to stretch the definition of directly to include an arrangement by way of intervening elements, then the at least one actuating device 26, 27 or the pressurized fluid of GB'079 operates directly on the brake lining 19 by way of intervening elements to the same extent as Applicant's invention. Accordingly, the rejections have been maintained.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mmb

December 17, 2009

/Melody M. Burch/

Primary Examiner, Art Unit 3657